

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON LOCAL GOVERNMENT**

**Call to Order:** By **CHAIRMAN DALE MAHLUM**, on February 1, 2001 at 3:00 P.M., in Room 335 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Dale Mahlum, Chairman (R)  
Sen. John C. Bohlinger, Vice Chairman (R)  
Sen. Chris Christiaens (D)  
Sen. John Cobb (R)  
Sen. Jim Elliott (D)  
Sen. Bill Glaser (R)  
Sen. Duane Grimes (R)  
Sen. Don Hargrove (R)  
Sen. Ken Miller (R)  
Sen. Ken Toole (D)

**Members Excused:** Sen. Emily Stonington (D)

**Members Absent:** None.

**Staff Present:** Leanne Kurtz, Legislative Branch  
Mary Gay Wells, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 215, 1/16/2001  
SB 249, 1/16/2001

Executive Action:

**{Tape : 1; Side : A; Approx. Time Counter : 0}**

**HEARING ON SB 249**

**Sponsor:** SEN. KEN TOOLE, SD 27, HELENA

**Proponents:** Lonny White, Billings  
Tim Davis, Executive Director, MT Assoc. of Smart  
Growth  
Alan Nicholson, Helena Developer  
Frank Crowley, Helena

**Opponents:** None

**Opening Statement by Sponsor:**

**SEN. KEN TOOLE, SD 27, HELENA.** This bill is an act to encourage state agencies to locate state office buildings in downtown areas. There is a law in Maryland that encourages state offices to locate in development zones and downtown areas. Vermont has a similar program. This statute is patterned after Pennsylvania. A requirement would be set for state agencies, when looking for office space, to look at downtown areas. On page 3, subsection (7) is the meat of that requirement. It sets forth certain things to be looked at. This is not a mandate for agencies to go or stay downtown. A new building on a campus would not make much sense. This is not an effort to tie state agencies to a mandated requirement. This is to encourage them to look at downtown areas.

The fiscal note states an impact on the state. He offered some amendments that will be discussed during executive action **EXHIBIT (los26a01)**. This would allay some concerns about the cost of this bill. In the mid 1980's, a similar bill was adopted that required state agencies to look at co-locating. When looking for office space, they were asked to look at buildings that already housed other state agencies. The fiscal note on that bill was considerably less.

**Proponents' Testimony:**

**Lonny White, Billings.** He stated that he is a downtown property owner in Billings. He handed out an ownership plat of downtown Billings **EXHIBIT (los26a02)**. This presented a wonderful opportunity to look at one of the Administration's latest Request For Proposal (RFP). The state was looking to co-locate some state facilities. The state in the end chose to cancel the RFP because the cost was too high regarding the cost per square footage. One item in the fiscal note, number 3, states, "Once the preference criteria are written, there could be the possibility that agencies leasing space would pay a premium for

downtown space. This premium is known to vary with location, but a typical differential is three dollars per square foot per year." In downtown Billings the cost is going to be greater per square foot. If the state goes forward with this bill, they need to consider that. This particular project shown on the plat was frustrating to him as a property owner because he saw the state wanting to co-locate agencies next to the court house. But they didn't seem to work together. He then saw the federal government last year give to Big Sky Economical Development Authority in downtown Billings \$575,000 to grow green space. If the governmental entities would work with each other and the private sector, they and the private sector would both be a winner. Federal government with their urban renewal program requires the GSA to first deal with local government entities. That competes with property owners from the private sector. When two government entities negotiate between themselves to go into a downtown area, to either build a parking ramp or a state facility, the private sector should be a part of that discussion. That would help to make the playing field more level. He sited an instance in Billings that showed the federal government by-passing the private sector and choosing public land when the private sector had property much closer to the federal building that was involved.

**Tim Davis, Executive Director, MT Assoc. of Smart Growth.** He handed two letters to the committee. One was from Downtown Billings Partnership, Inc. **EXHIBIT(1os26a03)** and one was from Downtown Helena Business Improvement District (BID) **EXHIBIT(1os26a04)**. They supported the bill. If the local economy can't be anchored by keeping state agencies downtown, local economy suffers.

**Alan Nicholson, Helena Developer.** He is currently developing the Great Northern Town Center. He was a strong supporter of the bill. With respect to the fiscal note, one thing the Department of Administration could do, even if the bill does not pass, is to make better use of local development agencies. Even in the smaller communities, there are local development agencies. They have chambers of commerce as well. They have the information as to space available, the cost and how suitable it would be. There are federal executive orders which actually require the federal government first to look at downtown areas. There are more requirements on that bill than on this one. The new federal buildings that are going up in downtown Helena are being built right next to his project. It is true that sometimes the local community will provide or sell property for those buildings; but they are always developed by the private sector. They are not government owned buildings. Everyone recognizes that downtown is the heart of the community. Billings in some ways is an example

of a community that lost its close community feeling and is now trying to regain it. It is expensive to allow communities to sprawl, even small communities. Sewers, water, roads, lights, etc. all have to be built. Fire protection and police protection all add into the equation. Property values suffer when the downtown area deteriorates. Helena has kept their downtown prosperous. Another good factor, when government agency people work downtown, they interact with the citizens of the community in a way they can't in other locations. This bill would be good for all concerned.

**Frank Crowley, Helena.** He supported the bill wholeheartedly. The vitality of downtown Helena is central to the whole community.

**Opponents' Testimony: None**

**Questions from Committee Members and Responses:**

**SEN. JOHN BOHLINGER** asked what a good project, like **Mr. White** had proposed in the Billings's downtown area, would bring in property taxes to the county of Yellowstone. **Lonny White** answered approximately \$50,000 to \$60,000 annually. Though the price would have been high, there are other factors that make a project worthwhile.

**SEN. BOHLINGER** asked what future plans were foreseeable. **Mr. White** responded that with the passage of this bill, it would give the state the opportunity to work closely with other government entities. Cities and counties tend to compete with each other. Working together, a facility could be built that would be a benefit to all.

**SEN. BOHLINGER** wondered how many people could feasibly be employed and then how would that affect the downtown area. **Mr. White** said there would have been 157 state employees.

**SEN. DON HARGROVE** wanted someone from the Dept. of Administration to answer a question. He questioned if the Dept. considered the downtown areas at this time. **Garett Bacon, Leasing Officer, Dept. of Administration** responded that when the Dept. met with the agencies who had need for space, they looked at what would best serve the public. There were 237 folks in the RFP that needed to be downtown. One third of those folks felt that, for the people they serve, it would not be good for them to be downtown. Each agency had different budgets to work with. It didn't seem feasible at that time to bring them all together and co-locate them in downtown Billings.

**SEN. HARGROVE** inquired if the Dept. would consider the downtown area in Choteau. **Mr. Bacon** said absolutely. In an RFP in a smaller town, most people are happy to be in the downtown area.

**SEN. CHRIS CHRISTIAENS** asked **Mr. Bacon** if he would still be supportive of the bill if the two full time employees (FTE's) were taken out of the bill. **Mr. Bacon** was not opposed to that.

**SEN. CHRISTIAENS** stated that the bill should be amended to require or encourage collaboration with other local public entities. Section 2, 17-701, does not include these entities. **Mr. Bacon** replied that he did not think he would support that because it is hard enough right now in the state to get their act together. If others were required to do the same, all are hung up, all are incompetent. Put that all together and it is not going to work.

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**SEN. CHRISTIAENS** said that what might be seen are large increases in rent costs to the state that currently are not seen by not necessarily requiring the state to do this. In Missoula, co-locating into a new building was more costly. It was built and cost over \$11 per square foot, yet on the capitol complex that cost would be about \$5.23. Is this correct. **Mr. Bacon** said that was basically correct. Parking is an issue also downtown. The value of land per square foot in Billings is at a premium. Cost is the reason the state has not gone downtown in Missoula and Billings.

**SEN. CHRISTIAENS** wanted to know why the Dept. of Transportation and Fish, Wildlife and Parks and Corrections are exempt. **SEN. TOOLE** responded that it is because of the nature of their work.

**SEN. CHRISTIAENS** inquired if the FTE's were taken out of the bill, would that present a problem. **SEN. TOOLE** answered that he had amendments that would bring the costs down on the bill. He did not agree with the fiscal note. Two FTE's seemed unnecessary.

**SEN. DUANE GRIMES** indicated that quite often local government entities were hostile to the state locating in the court houses, etc. **Mr. Bacon** replied that the state is often in the county court houses and they are giving the state the "boot." That started two years ago. Of course, the state is not paying their way and therefore it is easy to give them the "boot." They pay the state rate which is not a lot.

**SEN. DON HARGROVE** said that he supports the bill where it says "consider." This meant to him that no money was necessary. But on the other hand, don't they already consider downtown. Is the bill necessary. **SEN. TOOLE** responded that there is probably some consideration. It probably was not universal and he felt it should be. As a statement of policy for the state, that is the issue. State agencies need the flexibility to deal with a hostile local government who does not want to rent space.

**CHAIRMAN DALE MAHLUM** enlarged on the fact that as a city grows, strip malls spring up and the folks follow. This leaves the downtown area with empty buildings. Are these the buildings that would be looked at for state agencies. **SEN. TOOLE** said that is the ideal. The buildings could be used for multiple use.

**Closing by Sponsor:**

**SEN. TOOLE** closed. The cost of locating agencies on the perimeter of towns is high. He asked the committee to keep that in mind.

**HEARING ON SB 215**

**Sponsor:** **SEN. DALE BERRY, SD 30, HAMILTON**

**Proponents:** Tom Daubert, MT Solid Waste Contractors Assoc.  
 Webb Brown, MT Chamber of Commerce  
 Doug Sparrow, City/County Sanitation, Inc.  
 Roger Bridgford, MT Waste Systems, Great Falls  
 Gordon Morris, Director, MT Assoc. of Counties  
 Marc Johnson, Flathead Disposal, Ronan  
 Charles Brooks, Billings Area Chamber of Commerce  
 Cliff Christian, MT Building Industry Assoc.  
 Tom Earl, Great Falls  
 Terry Archambeault, Glasgow  
 Sue Weingartner, MT Solid Waste Contractors Assoc.,  
 Helena  
 James E. Leiter, BFI Waste Systems, Missoula  
 John Whittman, Billings  
 Peggy Trenk, MT Realtors Assoc.  
 Ron Hall, Great Falls

**Opponents:** Ron Alles, Chief Administration Officer, Lewis &  
 Clark County

**Steve Johnson, Director, Flathead County Solid Waste District**

**Mark Nelson, Program Director, Lake County Solid Waste District**

**Alec Hansen, MT League of Cities/Towns**

**Sherrel Rhys, Jefferson County**

**Will Selser, Manager, Solid Waste System, Lewis & Clark County**

**Opening Statement by Sponsor:**

**SEN. DALE BERRY, SD 30, HAMILTON.** Senate Bill 215 was the result of an interim study. The focus was to look at competition between government and the private sector. Free enterprise should provide services and there seemed to be abuses by local government, state government, etc. The study was to come up with a full cost accounting (FCA) process. State law does not allow charges or rates to be less than for the services received. This bill was brought on behalf of solid waste providers. The intent was to say to county governments that they must use FCA in identifying all costs for solid waste management. It also requires an independent audit for compliance to show that they are using FCA. An audit can be requested with both parties agreeing upon the independent auditor. If the government entity is in compliance, the person requesting the audit must pay for the audit. If the government entity is not in compliance, they will assume the cost of the audit. All costs must be in the equation for determining what the government entity charges. In Jefferson County, there had been a problem.

**Proponents' Testimony:**

**Tom Daubert, MT Solid Waste Contractors Assoc.** He reiterated much of what had been previously stated. The federal Environmental Protection Agency strongly recommends FCA for local governments. They found that with only FCA can local governments think clearly and accurately about the total costs involved. The EPA has published some documents that are specific to FCA for solid waste programs. There are even workshops upon request. He handed out a statement **EXHIBIT(1os26a05)** showing that it is in current law that counties cannot establish rates for services that are less than the actual cost of providing services. By developing the FCA process, the counties can actually see what the total costs are and adjust the rates accordingly. If they don't, it creates unfair competition for the private sector. He then handed out two summarizations of the final report from the interim committee **EXHIBIT(1os26a06)**, **EXHIBIT(1os26a07)**. He also handed out a sheet showing taxes that only private sector garbage

companies pay **EXHIBIT(los26a08)**. Local government does not pay these taxes.

This shows that a private sector bid on solid waste removal will be somewhat higher than local government. Therefore, if government does not count all its costs, it would seem that government can do it cheaper.

The amendment **EXHIBIT(los26a09)** speaks to an aspect of the bill. On page 2, line 7 and 8 of the bill, in current law, counties do have the authority to charge for solid waste services even if a person is not being served. This amendment clarifies that a property owner cannot just decide not to take county service. Instead, the property owner must use a licensed operator authorized by the Public Service Commission (PSC) to haul garbage. That gives the property owner a choice and the private sector is not at a disadvantage.

**Webb Brown, MT Chamber of Commerce.** They stand in support of SB 215. MT. Contractors Assoc. could not be here at the time but they are in support of the bill also.

**Doug Sparrow, City/County Sanitation, Inc.** They operate in the Helena area. They do provide services for the county. He felt that the bill was good. It is necessary for him to know that the county is looking at all the costs of their solid waste program before setting rates. This helps him when they submit bids for contracts also.

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**Roger Bridgford, MT Waste Systems, Great Falls.** They serve over 28 counties in Montana. Some of those counties have solid waste districts. He felt that this was a very good bill.

**Gordon Morris, Director, MT Assoc. of Counties.** He had been involved with the interim committee. He read portions of his letter which he then handed in **EXHIBIT(los26a10)**. He stated that Montana local government entities have been more open in all ways than any other state. No one should be fearful of Sections 2, 3, 4 and 5. He had one exception with the bill. In Section 1, compliance audits are detrimental to local government entities. It is not necessary. They are audited already. He felt this section should be deleted. Concerning the amendment that had been offered, he read another paragraph from his letter stating the PSC needs to look at solid waste hauling where no rate structure is authorized.

**Marc Johnson, Ronan.** He had owned and operated a solid waste hauling business for the last 21 years. About eight years ago



he served on a committee to look at Lake County and what their costs were. They found that the county was charging \$3 per month per unit for hauling service where the customers had to take their garbage to one of two large containers. The actual cost per unit in that area was about \$45 per month. The local hauler was charging \$10 per month for door to door pickup plus his customers still had to pay the other \$3. His hope was that FCA would show the total costs that counties pay for their garbage collection and thus level the playing field. FCA will encourage "pay as you throw." When the cost becomes too high for folks, they will start to recycle.

**Charles Brooks, Billings Area Chamber of Commerce.** The Chamber views the bill as a "sunlight" bill. This will put the private sector on a true competitive basis with government entities.

**Cliff Christian, MT Building Industry Assoc.** FCA for local governments is going to help everyone. His group builds the houses and they are being asked to do some incredible things for the development of property. One developer told him that he was being asked to pave the road fifteen miles from the subdivision. Local government doesn't have the money to pay for it and if the developer wants his subdivision to go through, he'll have to pave that extra road. With FCA, the counties can begin to get a handle on what their costs are. If fees have to go up for certain services, so be it.

**Tom Earl, Great Falls.** He had been pushed out of his business because the county charged less for service than what their true total cost was. He supported the bill.

**Terry Archambeault, Glasgow.** He had been hauling garbage since 1962. Year after year his company had submitted bids for hauling. It was not a fair or level playing field. FCA will make the difference.

**Sue Weingartner, MT Solid Waste Contractors Assoc., Helena.** She was speaking on behalf of Bitterroot Disposal of Hamilton. It is a family owned business. They haul and recycle. They wanted the committee to know they supported the bill.

**James E. Leiter, BFI Waste Systems, Missoula.** He gave his testimony and handed in his written copy **EXHIBIT(los26a11)**.

**John Whittman, BFI Waste Systems, Billings.** His company services mainly rural communities. He explained how his company services these different communities.

**Peggy Trenk, MT Realtors Assoc.** Her group believed that the bill will encourage competition and be helpful for everyone concerned. She handed in a letter of support from the Montana Contractors Association **EXHIBIT (los26a12)**.

**Ron Hall, Businessman, Great Falls.** He had experienced unfair practices of government accounting. He was in favor of FCA. He handed in a copy recounting the problems he had encountered **EXHIBIT (los26a13)**.

**Opponents' Testimony:**

**Ron Alles, Chief Administration Officer, Lewis & Clark County.** He was not an opponent of FCA. Lewis & Clark County already practices that accounting form. EPA requires all entities to comply with closure and post closure costs. FCA alone is not fiscally responsible in rate setting. Cash basis is not fiscally responsible. The two in conjunction enables rate settings. One example is: A vehicle is purchased with a 10 year life. With FCA, the rate would be recouped over a 10 year period: \$1,000/year. However, if bonds were issued for purchase of vehicle and repaid over a period of five years, the \$10,000 would have to be repaid in a five years. In essence, \$2,000 would have to be collected each year to repay the \$10,000. This bill does allow for debt service, but it also requires at the end of the five years, there needs to be maintained that \$1,000 rate for the next five years. FCA requires that. That is why some cash basis needs to be included. He gave another example. He then handed in some information that would help the committee to understand the more intricate parts of FCA **EXHIBIT (los26a14)**.

Separate audits are not necessary. The Department of Commerce has compliance requirements for all entities. The counties already are required to have an audit. The counties already do everything that this bill would require.

**Steve Johnson, Director, Flathead County Solid Waste District.** He gave his testimony and handed in a written copy **EXHIBIT (los26a15)**.

**Mark Nelson, Program Director, Lake County Solid Waste District.** He gave his testimony and handed in a written copy **EXHIBIT (los26a16)**

**Alec Hansen, MT League of Cities/Towns.** He stated his opposition to the bill.

**Sherrel Rhys, Jefferson County.** She handed out a pamphlet "Waste Not Montana 2001" **EXHIBIT(10s26a17)**. She gave her testimony and handed in her written testimony **EXHIBIT(10s26a18)**

**Will Selser, Manager, Solid Waste System, Lewis & Clark County.**

The essence of this bill is if all counties have FCA, the playing field will be leveled. During the interim committee meetings, the same issue was raised in the same manner and there was not a single piece of evidence that showed the playing field was not already level. What was pointed out to the committee was the private sector already enjoyed an advantage. They have Public Service Commission protected calling contracts. They are not subject to any kind of rate setting by the PSC. Local government is subject to strong light of day. The message that local government is not playing fair is skewed. He spoke only on solid waste and they could not play unfair if they wanted to. They are audited. Any rate changes are painfully public. A letter must be sent to every person in the district if rates are going to be raised. Somehow it was inferred that cheaper "tipping fees" equal less recycling. If the county artificially suppresses tipping fees through the accounting procedures, people will throw more things away and not recycle. In Missoula, the landfill has one of the lowest "tipping fees" in the state. On a regular basis, truck loads of tires come from Idaho. Idaho has banned tires in their landfills. The private landfill in Missoula accepts those whole tires. That is one of the most ineffective ways of getting rid of waste. They do it because they make money.

In Section 2, the bill requires that local boards establish their rates using the cost factors noted in Subsection 2. This is another way to tell the counties they have to use FCA to set rates. The wording is not very clear. It does not indicate whether it is the only thing that could be used. There is a landfill in Lewis & Clark County that has a 50 year estimated life. There is a charge of \$22.50 for a one time use. FCA is what determined that rate. If the private sector comes along and states they can do it for \$18.00 per ton, they do it by doubling the amount of garbage that is buried in that landfill every year. That is their process. The fundamental difference between private sector and government sector is private sector digs a hole and fills it as fast as possible because that is how they make the maximum amount of money. The public sector board wants that landfill to last as long as possible. That includes maximizing recycling. Finding new landfills is not an easy thing to do.

**Questions from Committee Members and Responses:**

**SEN. DUANE GRIMES** stated that there had been criticism of the audit part of the bill. Were audits specifically discussed in the interim committee. **Tom Daubert** disagreed with the statements the opponents made about the audit. They suggested the possibility of multiple audits simultaneously and that would not happen. The other thing is they state they are already being audited but he believed that was mainly to show their bank books and statements balanced. The type of audit this bill envisions is one that would make sure that all the costs of running the landfill is accounted for and would then be used to determine rates. The bill would not create an unfunded mandate because accounting is already tracking the outlay of monies.

**SEN. GRIMES** stated the last opponent mentioned the problem in Section 2 which could potentially change all existing solid waste boards' rate settings. Would this mean that in many towns, they would have to review their costs and possibly raise their rates. **Mr. Daubert** replied that the intent of the bill states that next July 2002, the counties will need to have available for public inspection all the information concerning the costs for their solid waste management program and that the rates need to cover those costs.

**SEN. GRIMES** sought a response from **Jim Leiter** to the general concept of public versus private operators in regard to the net effect of stewardship on a landfill. **Mr. Leiter** replied that is difficult. It seemed to be an emotional issue. His company is not just in the landfill business. BFI is in the hauling and transportation business of garbage, transferring and recycling. They are an integrated waste management business. They provide services and expect to make a profit. To site a landfill, which is difficult to find and takes five to ten years, then fill it up as quickly as possible would put them out of the business. It would be foolish. Private/public stewardship is a more difficult question to answer. He had worked for the Dept. of Health & Environmental Sciences and managed the state's solid waste program. One of the reasons that he is working in the private sector is that he had come to the realization that in many cases private enterprise carries the full risk of what they do. They have full responsibility for closure and post-closure clean-up and any damage that might have occurred. Because of that, they aggressively address those issues today. A fee is charged at the gate that is based on an assumed risk the company has. Local governments also have that risk, but it is more diluted. Lewis & Clark County is paying for a closed Scratch-gravel landfill now. They paid for it up front when it was operating and now they have

to change their rates to pay for a closed landfill. The private sector tries not to do that.

**SEN. DON HARGROVE** asked a county employee what the bill would change from what the counties are doing right now. **Will Selser** declared that the bill is addressing non-existent problems. If the bill were enacted without the audit and rate setting requirements, it is a fairly moot bill.

**SEN. HARGROVE** presented the same question to a proponent of the bill. **Tom Daubert** replied that, obviously, local government has to keep track of all expenses and costs, but it doesn't always categorize them so that all the costs pertaining to a particular service are easily available. When the county commissioners spend many work sessions on a particular issue or when the county attorney spends time on a particular issue these costs are not necessarily tracked and applied to that particular service. The same applied to maintenance of equipment, etc. That would be the big change that this bill will bring forth.

**SEN. GRIMES** indicated that he only had knowledge of Lewis & Clark and Jefferson counties. Those problems seemed to be more of a federal government nature. He wondered when Lewis & Clark County first decided to get into the landfill and transfer business, did they use FCA. Did they evaluate this process then. **Mr. Selser** answered that early in the process they decided to minimize the traffic going to the landfill. The county had to use the city's transfer station. The city was also closing its landfill site at the same time.

**SEN. GRIMES** asked for clarification of "loss of local control." **Mr. Selser** maintained that if this bill does what he sees as its intention, the criteria upon which the county can set rates would be restricted. He felt that the bill was an unfunded mandate to a point. If the county uses FCA as the only criteria to set rates, that would eliminate some very important decision-making tools for the local community.

**CHAIRMAN DALE MAHLUM** offered that he had been on the interim committee and would bring his points to the executive action hearing.

**Closing by Sponsor:**

**SEN. BERRY** closed. The audit seemed to be a significant issue. He did not believe that anyone would frivolously demand an audit. If there were all the sunlight in the world on the county governments and if people could go and look at the county books to see exactly what the costs are, etc, they would not pay to

have an audit done. He did not want to see the audit removed via an amendment. The opponents seem to be paranoid about the audit portion. They have testified that they already use FCA and have regular audits. So what is the problem. They must perceive that this bill would force the counties out of the disposal business. The intent is to have sunlight on the true costs involved that help to set their rates. He reiterated that there are two kinds of audits. The kind that he wants to see are those that, again, would show exactly all the expenses involved in running a solid waste management program. If there is a flaw, it should be found and addressed. The private sector has to know all their costs in order to set their rates. It is imperative in order to make a profit. He feels that the public sector should know and acknowledge all their costs in order to set their rates. This would also be good for the taxpayer.

The rate setting provision changes the language a bit, but by law the counties cannot undercharge. The proponents who have testified are either in the industry or are people who see business as important. Private enterprise needs to be able to compete. This bill will make the playing field level.

**ADJOURNMENT**

Adjournment: 5:25 P.M.

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SEN. DALE MAHLUM, Chairman

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MARY GAY WELLS, Secretary

DM/MW

**EXHIBIT (los26aad)**